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No. 83-453

In the Supreme Court of the United States

OCTOBER TERM, 1983

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

UNITED PARCEL SERVICE, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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Respondent urges that the petition for a writ of certiorari in this case should be denied, so that the Board may reconsider the case. That suggestion should be rejected.

Respondent does not deny that the court of appeals concluded (see Pet. App. 24a-26a) that this case should be remanded to the Board because it disagreed with the Board's allocation of the burden of proof in dual motive cases, set out in *Wright Line, a Division of Wright Line, Inc.*, 251 N.L.R.B. 1083 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982). This Court subsequently upheld the Board's *Wright Line* allocation in *NLRB* v. *Transportation Management Corp.*, No. 82-168 (June 15, 1983). The court of appeals should have an opportunity to reevaluate whether a remand to the Board is still appropriate in light of *Transportation Management*.

It is therefore respectfully submitted that the Court should grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand the case to the court of appeals for further consideration in light of the Court's decision in *NLRB* v. *Transportation Management Corp.*[1]

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[1]The Court has followed this procedure in cases in which we filed protective petitions pending the Court's decision in *NLRB* v. *Transportation Management Corp.* See *NLRB* v. *Behring International, Inc.*, No. 82-438 (June 20, 1983); *NLRB* v. *Heartland Food Warehouse*, No. 82-736 (June 20, 1983); *NLRB* v. *Blackstone Co.*, No. 82-1105 (June 20, 1983); *NLRB* v. *New York University Medical Center*, No. 82-1705 (Oct. 3, 1983).

Respondent has petitioned for a writ of certiorari on another issue raised by the decision below (No. 83-71). On October 20, 1983, we filed our brief in opposition in No. 83-71.

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